UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

In re: Case No.: 8:11-bk-22258-MGW
Chapter 7

Fundamental Long Term
Care, Inc.

Debtor.
_____________________/

MOTION FOR ORDER AUTHORIZING EXAMINATION PURSUANT TO RULE 2004 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE (MATTHEW BOX)

Beth Ann Scharrer, ("Trustee") by and through her undersigned counsel, files this Motion for the Entry of an Order Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure Authoring the Examination of certain individuals that are or may be related to Fundamental Long Term Care, Inc. ("Debtor") and it's wholly owned subsidiary, Trans Health Management, Inc. ("TMHI") and persons that may be in possession of records and/or information related to the assets, liabilities and business of the Debtor, and, in connections with said examination, requiring the production of relevant documents and records. In support of this Motion, the Trustee submits as follows:

1. This Motion is a core proceeding pursuant to 28 U.S.C. §157, and this Court has jurisdiction to hear this Motion pursuant to 28 U.S.C. § 1334. Venue is proper in this District.

2. On December 8, 2011 ("Petition Date"), an Involuntary Petition under Chapter 7 of the Bankruptcy Code was filed against Fundamental Long Term Care, Inc., Debtor. On January 12, 2012, after no response from Debtor, the Court entered an Order for Relief (Doc. No. 6).

3. Beth Ann Scharrer, Trustee, is duly qualified and acting Trustee.

4. No response was initially made by or on behalf of the Debtor, and no Schedules or Statement of Financial Affairs have been filed. On April 2, 2012, Debtor's Motion for Entry of an Order Converting Debtor's Bankruptcy to a Case Under Chapter 11 of the Bankruptcy Code was filed on behalf of the debtor. As such, there is little information on the record upon which the Trustee can rely to determine the assets and liabilities of the Debtor.

5. Rule 2004 provides, in pertinent part, that upon the motion of any party in interest, "...the court may order the examination of any entity." The permitted scope of the examination is far reaching. Pursuant to Rule 2004(b), the examination "may relate...to the acts, conduct or property or to the liabilities or financial condition or the Debtor, ..." or to any matter which may affect the administration of the debtor's estate...and to any other matter relevant to the case...". The purpose of a Rule 2004 Examination is to assist a party in interest in determining the nature and extent of the bankruptcy estate, revealing assets, examine transactions and assessing whether wrongdoing has occurred. *Cameron v. United States*, 231 U.S. 710, 717 (1914).

6. "Rule 2004 permits the broadest kind of deposition." I*n re Stewart*, No. 5:95-CV-235-4, 1995 U.S. Dist. LEXIS 22333, at *4 (Banr. M.D. Ga. June 7, 1995.) (internal cites omitted). The purpose of a Rule 2004 Examination is to "show the condition of the estate and to enable the Court to discover its extent and whereabouts, and to come into possession of it, that the rights of the creditors may be preserved." *In re Coffee Cupboard, Inc.*, 128B.R. 509, 514 (Banr. E.D.N.Y. 1991) (quoting *Cameron v. United States*, 231 U.S. 710, 717, (1914)). The scope of an inquiry permitted under Rule 2004 is broad in order to reveal "the nature and extent of the estate; [ascertain] assets; and [discover] whether any wrongdoing has occurred." *In re Corso*, 328 B.R., 375, 383 (E.D.N.Y. 2005); see also *In re Pan Am. Hospital Corp.*, Nos. 04-

11819-BKC-AJC, 04-11820-BKC-ALC, 2005 WL 2245907, at *2(Bankr. S.D. Fla. Feb. 25, 2005) ("courts have acknowledged the rule's broad scope"); *In re Drexel Burnham Lambert Group, Inc.*, 123 B.R. 702, 708 (Bankr. S.D.N.Y. 1991) ("Starting with the 1978 Code there has been an expansive reading of the rule….It can be legitimately compared to a fishing expedition.") (citing *In re Vantage Petroleum Corp.*, 34 B.R. 650, 651 (Bankr. E.D.N.Y. 1983).

7. As more specifically identified below, the Trustee's examination of the Debtor officers, directors and shareholders and related parties will explore, among other things, issues related to the assets and liabilities of the Debtor, including but not limited to: the history of the Debtor, either in connection with its formation and organization; assets transferred to and from the Debtor, either in connection with its formation or outside the course of business; liabilities accepted by the Debtor on connection with any such transactions; the disposition of any assets of the Debtor's predecessors connection with such transactions.

8. This Court has authority to grant relief requested under Rule 2004 on an ex parte basis. *See* Advisory Committee note to Bankruptcy Rile 2004 ("The motion may be heard ex parte or it may be on notice").

9. Applying the foregoing principles, the Trustee is entitled to Rule 2004 examination of the Debtor and Related Entities and individuals who may have information concerning the assets, liabilities, books and records of the Debtor.

10. The Trustee respectfully requests the Court enter an order pursuant to Rule 2004 of the Bankruptcy Rules authorizing the Trustee to conduct oral examination of **Matthew Box** not later than **May 10, 2012 at Capital Reporting, 111 South Calvert Street Suite 270, Baltimore MD,** or at a mutually agreed upon location and time and to require him to bring the documents set forth on Exhibit A attached hereto.

11. The Trustee additionally requests the Court enter an order pursuant to Rule 2004 to permit interested creditors to attend the Rule 2004 examinations and make inquiry.

WHEREFORE, Beth Ann Scharrer, Trustee, respectfully requests that the Court enter an Order Authorizing the Rule 2004 Examination of Matthew Box and require that he produce documents in his possession or control listed on Exhibit "A" attached hereto. Further order that the Rule 2004 examination for Matthew Box take place on **May 10, 2012 at Capital Reporting, 111 South Calvert Street, Suite 270, Baltimore MD** at 9:30 am unless the parties can mutually agree to a time and location prior to that date.

Respectfully submitted,

WATKINS LAW FIRM, P.A.

/s/ Allan C. Watkins

ALLAN C. WATKINS, ESQUIRE
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Attorney for Beth Ann Scharrer, Trustee

CERTIFICATE OF SERVICE

I HEREBY CERTIFY I filed the above on the 3rd day of April, 2012 with the CM/ECF filing system through the United States Bankruptcy Court for the Middle District of Florida which will send notification of the foregoing via electronic mail to:

United States Trustee, TPA7

Beth Ann Scharrer, Esquire

Harley Riedel, Esquire & Daniel R. Fogarty, Esquire, Stichter, Riedel, Blain & Prosser, P.A., 110 East Madison Street, Suite 200, Tampa, Florida 33602;

Allan C. Watkins, Esquire, 707 North Franklin Street, Suite 750, Tampa, Florida 33602

Paul Steven Singerman, Esquire, Brian K. Gart, Esquire, Berger Singerman LLP, 1450 Brickell Avenue, Ste. 1900, Miami, Fl., 33131

With a copy via US Mail to:

Fundamental Long Term Care, Inc. c/o The Corporation Trust Company as Registered Agent, Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801;

Gary R. Trombley, Esquire & Ron Hanes, Esquire, Trombley & Hanes, P.A. 707 N. Franklin Street, 10th Floor, Tampa, Florida 33602

/s/ Allan C. Watkins

ALLAN C. WATKINS, ESQUIRE

DOCUMENTS TO BE PRODUCED

1. Any letters, memorandums, correspondence or emails with the following related to any transactions involving THM and/or FLTCI:

    a. Kristi Anderson, Esquire
    b. Maria Ellena Chavez-Ruark, Esquire
    c. Alan Grochal, Esquire
    d. Michael Sandnes
    e. Christine Zack, Esquire
    f. W. Bradley Bennett
    g. Mark Fulchino
    h. Matthew Box
    i. Bill Goldberg
    j. Adam Sherman
    k. Toni-Jean Lisa, Esquire
    l. Murray Forman
    m. Leonard Grunstein
    n. Barry Saacks

2. Any and all documents which reflect the shareholders of FLTCI and/or THM from 2006 to the present.

3. Any and all documents which reflect the officers of FLTCI and/or THM from 2006 to the present.

4. Any and all documents reflecting any asset of FLTCI and/or THM from 2006 to the present.

5. Any and all documents reflecting any liability of FLTCI and/or THM from 2006 to the present.

6. The incorporation of and/or changes in corporate status of FLTCI and/or THM in all states in which it does or has done business from 2004 through the present. This includes, but is not limited to: incorporation, name changes, changes in corporate form, changes in members and/or directors, articles of incorporation, by-laws, and dissolution for any reason.

7. Copies of FLTCI's federal income tax records and returns for the last six (6) years, and copies of Fundamental Long Term Care, Inc.'s corporate state income tax returns for the last six (6) years.

8. Copies of THM.'s federal income tax records and returns for the last six (6) years, and copies of Trans Health Management, Inc.'s corporate state income tax returns for the last six (6) years.

9. Any and all corporate financial documents (i.e. balance sheets, accounts receivables, accounts payable) for Fundamental Long Term Care, Inc. from 2006 to present.

10. Any and all corporate financial documents (i.e. balance sheets, accounts receivables, accounts payable) for Trans Health Management, Inc. from 2006 to present.

11. All checkbooks, check stubs, cancelled checks, and bank statements for checking accounts owned solely by FLTCI or owned jointly as partner or joint venturer in any business enterprise, for any matters or records for the period 2006 to the present, including for the current month.

12. All checkbooks, check stubs, cancelled checks, and bank statements for checking accounts owned solely by THM or owned jointly as partner or joint venturer in any business enterprise, for any matters or records for the period 2006 to the present, including for the current month.

13. All documents and/or other materials which refer or relate to the sale of THM's stock and/or assets to FLTCI., and/or any of its subsidiaries, affiliates, agents, partners, shareholders, and/or joint venturers, including, but not limited to any purchase and sale agreement, sales contracts, due diligence materials, liabilities listing, and/or any materials relating to consideration of Trans Health Management, Inc.'s financial status both pre and post sale, and/or pending or threatened claims by creditors.

14. All documents that reflect the sale and disposition of any assets of FLTCI and/or THM from 2006 forward.

15. All documents that reflect assets being transferred to and from FLTCI and/or THM either in connection with its formation or outside the course of business.